SYNOPSIS OF THE PROPOSED RESEARCH WORK

ON THE TOPIC

"PROTECTING WOMEN FROM DOMESTIC VIOLENCE: A LEGAL AND JUDICIAL PERSPECTIVE"

SUBMITTED BY

MAHENDRA MAHADEV BEMBALGE

M.A. ECO, NET, M.Phil., Ph.D., LL.M.

UNDER THE GUIDENCE OF

DR.PUNDLIK ESHWAR BHOSLE

M.A.,LL.M., DLL, SET., Ph.D.

Associate Professor and Research Supervisor

FACULTY OF LAW

Narayanrao Chavan Law College, Nanded.

SWAMI RAMANAND TEERTH MARATHWADA UNIVERSITY, NANDED

FOR THE AWARD OF Ph.D. IN THE FACULTY OF LAW

SWAMI RAMANAND TEERTH MARATHWADA UNIVERSITY, NANDED

DECEMBER 2024

"PROTECTING WOMEN FROM DOMESTIC VIOLENCE: A LEGAL AND JUDICIAL PERSPECTIVE"

"Violence against women is a manifestation of historically unequal powers , relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women----'' (The United Nations Declaration on the Elimination of Violence against Women , General Assembly Resolution, December 1993.)

Violence against women and girls continue to be a global epidemic that kills, tortures and maims-physically, psychologically, sexually and economically. It is one of the most pervasive of human rights violations, denying women and girls equality, security, dignity, self- worth and their right to enjoy fundamental freedoms .

Violence against women is present in every country, cutting across boundaries of culture, class, education, income, ethnicity and age . Even though most societies proscribe violence against women , the reality is that violations against women's human rights are often sanctioned under the garb of cultural practices and norms , or through misinterpretation of religious tenets. Moreover when the violation takes place within the home ,as is very often the case, the abuse is effectively condoned by the tacit silence and the passivity displayed by the State and the law-enforcing machinery . The global dimensions of this violence are alarming , as highlighted by studies on its incidence and prevalence. No society can claim to be free of such violence , the only variation is in the patterns and trends that exist in countries and regions . Specific groups of women are more vulnerable , including minority groups,

indigenous and migrant women, refugee women and those in a situation of armed conflict, women in institutions and detention , women with disabilities,-female-children-and-elderly-women.

The United Nations Declaration on the Elimination of Violence against women defines violence against women as: “Any act of gender based violence that results in, or is likely to result in , physical, sexual or psychological harm or suffering to women , including threats of such acts, coercion or arbitrary deprivation of liberty , whether occurring in public or private life. ” This definition refers to the gender- based roots of violence, recognizing that “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.” It broadens the definition of violence by including both the physical and psychological harm done towards women and it includes acts in both private and public life . The Declaration defines violence against women as encompassing, but not limited to , three areas : violence occurring in the family, within the general community, and violence perpetrated or condoned by the State. Women and children are often in great danger in the place where they should be safest : within their families . For many, “home” is where they face a regime of terror and violence at the hands of somebody close to them – somebody they should be able to trust . Those victimized suffer physically and psychologically . They are unable to make their own decisions , voice their own opinions or protect themselves and their children for fear of further repercussions . Their human rights are denied and their lives are stolen from them by the ever present threat of violence . The family is often equated with sanctuary—a place where individuals seek love, safety, security and shelter . But the evidence shows that it is also a place that imperils lives and breeds some of the most drastic forms of violence perpetrated against women and girls.

Violence in the domestic sphere is usually perpetrated by males who are, or who have been, in positions of trust and intimacy and power—husbands, boyfriends, fathers, fathers-in law, stepfathers, brothers, uncles, sons or other relatives . Domestic violence is in most cases violence perpetrated by men against women. Women can also be violent, but their actions account for a small percentage of domestic violence .

Violence against women is often a cycle of abuse that manifests itself in many forms throughout their lives .

Examples of violence against women throughout the life cycle

Phase	**Types of violence**
Pre-birth:-	Sex-selective abortion; effects of battering during pregnancy on birth outcomes .
Infancy	Female infanticide; physical, sexual and psychological abuse.
Girlhood:-	Child marriage; female genital mutilation; physical, sexual and psychological abuse; incest; child prostitution and pornography .

Adolescence and adulthood:- Dating and courtship violence (e.g. acid throwing and date rape)economically coerced sex (e.g. school girls having sex with " sugar daddies" in return for school fees), incest; sexual abuse in the workplace; rape; sexual harassment; forced prostitution and

pornography; trafficking in women; partner homicide; psychological abuse ;abuse of women with disabilities; forced pregnancy .

Elderly:- Forced "suicide" or homicide of widows for economic reasons ; sexual, physical and psychological abuse .

(Source : "Violence Against Women" ,WHO, FRH/WHD/97.8)

What sets out domestic violence from other forms of violence against women is that it occurs within the framework of intimate relationships in a situation of dependency, making reporting and access to legal aid and other support services difficult . Moreover that domestic violence exists is not even recognized by the law . Domestic violence is still an issue that 'can be sorted out within the four walls of the house' and some amount of violence is considered part of normal 'wear and tear of marriage'. With such perceptions rampant amongst not only the general public but also the bureaucracy, judiciary and other agencies of the State, it is not surprising then that domestic violence is an issue which has not been taken up seriously by law .

The eastern countries were known for their chivalry in honouring and respecting the dignity of women , treating them as objects of affection and reverence . Dr. Sir Mohammad Iqbal, the great philosopher and poet said that if the whole universe is compared to a painting , the women are the glow, glamour and colour of it . They had few legal rights , but shouldered innumerable social obligations . This reflected , by and large , the social behaviour in this country , although much was left to be desired .

However, change came in society, not for better, but for the worst . Cases on atrocities against women are showing rising trend so much so that every day the columns in newspapers are full of reports of abuse of children and

women and deaths of women or suicide committed for not fulfilling the greedy demands of the husbands and /or their near relatives .

Women constitute about one-half of the global population, but they are placed at various disadvantages positions due to gender difference and bias . They have been the victims of violence and exploitation by male dominated society all over the world . Ours is a tradition bound society where women have been socially, economically, physically, psychologically and sexually exploited from time immemorial, sometimes in the name of religion, sometimes on the pretext of writing in the scriptures and sometimes by the social sanctions . The concept of equality between male and female was almost unknown to us before enactment of the Indian Constitution . Of course , the preamble of the constitution, which is the supreme law of the land , seek to secure to its citizens including women folk justice-social, economic and political, liberty of thought ,expression, belief, faith ,and worship, equality of status and opportunity and promote fraternity assuring dignity of the individual. The difference in treatement between men and women by the state is totally prohibited by the constitution of India .But the equality of status guaranteed by the constitution is only a myth to millions of women for whom life is stalked by various kinds of violence within their homes .

Domestic violence may take many forms . the main categories are usually identified—physical, sexual and emotional or psychological; but this classification is fairly crude and there are endless variations within each category . Domestic violence is never restricted to a single incident and it becomes more frequent and more severe over time . The violence may continue over many years .

Domestic violence experts have concluded that perpetrators of domestic violence seek power and control over their survivors . Women who are survivors of domestic violence have often been abused over an extended period . The abuse generally escalates: it often includes repeated emotional mistreatment, coupled with a range of physically violent acts used by the perpetrator to gain emotional and physical power and control over the survivor.

The issue of domestic violence is essentially the issue of the 'personhood of woman' whether in her matrimonial home or in her parental home . It is not limited to the harassment of young wives for more dowry or their being set fire by alleged stove bursts . The issue deals with all forms of violence against women in all the roles they play in society: daughter, sister, wife, mother, mother-in-law, daughter-in-law or sister-in-law .

Domestic violence is not simply a legal problem, which can be eradicated by appropriate legal measures alone . It is very much a social and psychological problem and can be tackled adequately by bringing about fundamental changes in the social system and in the attitudes of people towards women and children . Legal remedies are good and helpful in so far as they act as deterrents and attempt to curb the tendencies to violence, but they do not strike at its root cause. They are no doubt bold attempts to get rid of domestic violence from the system, yet by themselves they can do little to tackle the issues involved. It must be recognized that in traditional societies legislation by itself is an incomplete solution to the problem of social change .

The Protection Of Women From Domestic Violence Act 2005 was notified in the gazette of India on 14-09-2005 . The said Act is a comprehensive legislation to protect women from all forms of Domestic Violence. The Act

covers women who have been/are in a relationship with the abuser and are subject to violence of any kind physical, sexual, mental, verbal or emotional . The Act has been brought into force with effect from 26-10-2006 .

IMPORTANCE OF STUDY AND ITS APPLICATION

(1) INTERNATIONAL STATUS :

The United Nations , from the very day of its inception from 1945 till date worked to secure women's legal equality . The United Nations have chalked out a comprehensive programme by means of various conventions to uplift and develop the status of women in the field of education, politics including the position in social life with the formation of the Commission On Human Rights and the Commission on the Status Of Women in 1946 and the adoption of the Universal Declaration Of Human Rights in 1948 . The United Nations had also undertaken a massive research study to assess the position and status of women across the world . It was found that in many parts of the world the women have constantly been denied equality in law and also in practice . They are compelled to live under male dominated world and are subjected to variety of discriminations . As a result the United Nations have incorporated a series of treaties and conventions to achieve the equal legal and political rights of women worldwide .

The general assembly of the United Nations through its resolution (No:48/104,) United Nations Document No.(A/48/49) adopted the Declaration on the Elimination of Violence Against Women in 1993 . Notably, this Declaration is the first of its kind which exclusively deals with

the elimination of violence against women and intended to protect the fundamental right of freedom of women.

(2) **NATIONAL STATUS:**

Domestic Violence is undoubtedly a human rights issue and serious deterrent to development . The Vienna accord of 1994 and the Beijing Declaration and the platform for action 1995 have acknowledged this . The United Nations Committe on Convention On Elimination Of All Forms of Discrimination Against women in its general recommendation No. XII of 1989 has recommended that state parties should act to protect women against violence of any kind especially that occurring within the family. Presently , where a women is subjected to cruelty by her husband or his relatives, it is an offence under section 498-A of the Indian penal code. Now Section 498-A of the Indian Penal Code {IPC} is being replaced by Sections 85 and 86 of the Bharatiya Nyaya Sanhita {BNS}2023. Civil law does not, however, address this phenomenon in its entirety.

It is therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15, and 21 of the constitution to provide for a remedy under the civil law, which intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society .

On 26th October 2006, the Central Government published "The Protection of Women from Domestic Violence Act, 2005" in the official gazette. The act aims at providing protection to women from domestic violence faced by them within the four walls of their houses .

(3) SIGNIFICANCE OF STUDY:

Domestic violence is the most serious violation of all basic rights that a woman suffers in her own home at the hands of members with her own family . The manifold problems associated with domestic violence have been systematically exposed by data and in depth work undertaken by several people in the women's movement. Indeed, a number of recent studies such as the National Family Health Survey and National Crimes Records Bureau have identified the home as the site of violence against women and girl children.

Domestic violence has not only serious consequences for the health and well-being of the individual women, but it also serves to maintain their subjugation as a class. It is generally denying the woman her rights as an individual. **Significance of study is that it not only takes into consideration legal response to domestic violence under constitutional law, civil law and criminal law and judicial and police response to domestic violence but also shows the most important, satisfactory and crucial role which "THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005"is playing to protect women from domestic violence .**

BACKGROUND OF STUDY :

Domestic violence against women is an age old phenomenon . Women were always considered week, vulnerable and in a position to be exploited. Violence has long been accepted as something that happens to women . Family which was perceived as an arena of love, affection, gentleness and centre of solidarity and warmth has now become a centre of exploitation, assault and violence ranging from slapping, hitting, homicidal assault by one member of the family on the other to husbands and Mother in-laws

harassment for dowry or for any other reason . Dowry deaths, wife-battering, female child abuse, and abuse of elderly female in the family are also included in the domestic violence against women .

Domestic violence in all its forms has increasingly over the last two decades been recognized nationally and internationally as a serious problem, which has either been condoned or ignored

STATEMENT OF THE PROBLEM

Under Indian law, both criminal and civil, few provisions exist for the married woman to address issues of domestic violence . The existing personal laws (Hindu, Christian, Muslim, Parsi) and a few secular ones like the Special Marriage Act deal only with marriage and the breakdown of marriage . None of these offer any safeguard or right for the women to live in peace and harmony in the matrimonial home. While the history of legislation in India does show that laws have been amended numerous times, they do not seem to have served any purpose yet. These Acts have been piecemeal amendments and innovative interpretations introduce a perception of equality to women without bringing about any structural changes in the law. This is because the judiciary and the legal machinery have dragged their collective heels in recognizing the problems of violence that take place within the four walls of a supposedly secure home. Criminal law, or for that matter any other law, is not a solution to all the problems facing women(Lawyers collective, April 2002,p.7) within the four walls of their home. The present Act "The Protection Of Women From Domestic Violence Act 2005" is a significant step forward in providing women access to legal protection and relief from Domestic Violence. It also fulfills a long pending demand of many women organizations for a civil remedy to address this inadequately recognized yet rampant form of violence. It is

hoped that proper implementation of the Act would arrest the rising graph of Domestic Violence in the country.

AIMS AND OBJECTIVES OF RESEARCH

Research will be conducted with the following among other objectives:

(1) To study definition of domestic violence under criminal law, civil law, special laws and under "The Protection Of Women From Domestic Violence Act 2005".

(2) To study types, causes, characteristics, magnitude and forms of domestic violence.

(3) To study legal response to domestic violence under constitutional law, civil law and criminal law.

(4) To study judicial and police response to domestic violence.

(5) To study remedies for domestic violence under civil and criminal law .

(6) To study origin and development of "The Protection Of Women From Domestic Violence Act 2005."

(7) To study aims and objectives of " The Protection Of Women From Domestic Violence Act 2005."

(8) To study the provisions of "The Protection Of Women From Domestic Violence Act 2005" broadly .

(9) To study judicially decided cases under "The Protection Of Women From Domestic Violence Act 2005" to examine the role of the Act to protect women from domestic violence.

PERIOD OF THE STUDY

The proposed research work has been concentrated on the cases decided by the Indian Courts before 2020. The study has no reference for the law decided after this period

HYPOTHESIS

It is well known omnipresent problem that women are subjected to violence at home. Specially, in the context of India majority of such victims do not seek legal remedies. There are many reasons for this, because they are educationally backwards and do not have familiarity with the legal procedure and also having absence of faith in the legal system . We see that even in the present Indian society, position of the women is not better, while she is held in high esteem, worshipped, considered as an embodiment of tolerance and virtue, she has also been the victim of untold miseries, hardships, atrocities and violence caused and perpetrated by the male dominated society, in her most sacred and safe place—home, then the hypothesis formulated for the research study is that provisions under constitutional law, civil law, criminal law are playing meagre role to protect women from domestic violence but "The Protection Of Women From Domestic Violence Act 2005" is playing most important, crucial and satisfactory role to protect women of the country from Domestic Violence. Judiciary is also playing crucial role to protect women from domestic violence.

This hypothesis will be tested by the researcher by applying appropriate research methodology. To test the hypothesis not only the provisions of Domestic Violence Act 2005 but also the role of judiciary to protect women from domestic violence will be taken into consideration broadly. Judicially decided cases under "The Protection Of Women From Domestic Violence Act 2005" will be taken into consideration.

RESEARCH METHODOLOGY

The study on the above aspect of the role of different laws to protect women from domestic violence and the study of judicially decided cases will be taken into consideration by following historical, doctrinal and analytical method of research. This includes data collection method . In view of research subject and hypothesis formulated this method is considered as appropriate method of research .

COLLECTION OF DATA

As the researcher has taken the secondary method for the collection of secondary data which will be available/collected through Published Books, Report of different Commissions, International bodies, Statutes, Laws, Decisions of Supreme court and High courts, Articles, Journals therefore library is the gateway for of collection of secondary data.

LIMITATIONS OF RESEARCH

The researcher will take due care for the perfectness of the study but still it is handicapped due to the following limitations :

(1) Legal response to domestic violence under constitutional law, civil law and criminal law will be taken into consideration not very deeply and broadly but as the researcher thinks appropriate for the study. Study of judicially decided cases and their number under these laws is as per the discretion of researcher and need of study.

(2) Judicial and Police response to domestic violence will be taken into consideration not very deeply and broadly but as the researcher thinks appropriate for the study.

(3) Selection of judicially decided cases and their number which will be taken into consideration to test the hypothesis under “The Protection Of Women

From Domestic Violence Act 2005" will be as per the discretion of the researcher and the researcher thinks appropriate for the study.

BRIEF DESCRIPTION OF THE THESIS CHAPTERWISE

The present thesis **PROTECTING WOMEN FROM DOMESTIC VIOLENCE: A LEGAL AND JUDICIAL PERSPECTIVE** is divided into following eight chapters, the brief description of the contents therein are as under :

CHAPTER (I) INTRODUCTION

The present chapter aims to give a broad outline of the proposed research topic, the background of the research topic, aims and objectives with which the work has been carried out, base of hypothesis, methodology adopted for study. It also explains the brief idea of the research work.

CHAPTER (II) REVIEW OF LITERATURE

The total literature available on domestic violence is of various types i.e., research work (both published and unpublished dissertations), reports of the government and the paper published in professional journals. The researcher has gone through these sources. Efforts are made to study and analyses literature on the subject matter.

CHAPTER (III) DOMESTIC VIOLENCE-AN OVERVIEW

Under this chapter definition of domestic violence under civil law, criminal law and special laws will be studied. Types, causes, characteristics, forms, and magnitude of domestic violence will be taken into consideration broadly .

CHAPTER (IV) LEGAL RESPONSE TO DOMESTIC VIOLENCE

Under this chapter provisions under constitutional law, civil law and criminal law will be taken into consideration. Judicially decided cases under these laws will also be studied under this chapter.

CHAPTER (V) JUDICIAL AND POLICE RESPONSE TO DOMESTICE VIOLENCE

This chapter focuses on various judgments of the Supreme and High courts in India, and tries to analyze the manner in which the courts have dealt with the case of domestic violence. Police response to domestic violence will also be taken into consideration under this chapter .

CHAPTER (VI) ORIGIN AND DEVELOPMENT OF "THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005"

Under this chapter not only the origin and development but also the aims, objectives, characteristics of "The Protection Of Women From Domestic Violence Act 2005"will be taken into consideration broadly. Provisions of this Act will be studied broadly.

CHAPTER (VII) STUDY OF SELECTED CASES TO TEST HYPOTHESIS

Under this chapter judicial cases decided under "The Protection Of Women From Domestic Violence Act 2005"will be taken into consideration and studied and examined broadly to test the hypothesis.

CHAPTER (VIII) CONCLUSION AND SUGGESTIONS

The present chapter will be concluded by the factors considered in research work and will give a summary of the work done, the findings of the researcher and the suggestion with future utility of the research work.

REFERENCING SYSTEM

For the purpose of this research, researcher will apply the Harward referencing system for citing books, journals, government reports etc.

BIBLIOGRAPHY :

(I)BOOKS REFERRED

(1) Law Relating To Protection Of Women From Domestic Violence (First Edition 2008, Reprient 2012) Dr. Suman Rai forwarded by Hon'ble Mr. Justice K.N.Sinha. Orient Publishing Company. Allahabad.

(2) Commentary On Protection Of Women From Domestic Violence Act 2005 (Edition 2007, 3rd Reprint 2011) GANGULY'S. Dwivedi Publishing Company . Allahabad.

(3) Domestic Violence Against Women (Legal Control And Judicial Response) (2007) Preeti Misra .Published by Deep And Deep Publications Pvt Ltd . New Delhi .

(4) Law Relating To Women And Children (Fourth Edition 2010) Dr . S. C. Tripathi And Vibha Arora. Central Law Publications. Allahabad .

(5) Women And The Law (7th Edition 2010) Dr. G . B. Reddy. Gogia Law Agency. Hyderabad.

(6) Law Relating To Protection Of Human Rights (Second Edition 2005) Dr. Awasthi And Kataria . Orient Publishing Company.

(B)DICTIONARIES

(1) Concise Law Dictionary—Ramanatha Aiyar (1997Edition Reprint 2004)

(2)Compact Oxford Dictionary Thesaurus and Word Power Guide(Indian Edition)

(3) A New Approach Dictionary Of Living English (Nitin Prakashan, Pune 30.)

DR. PUNDLIK ESHWAR BHOSLE

Associate Professor &

Research Supervisor

Faculty of Law,

S.R.T.M.U. Nanded

BEMBALGE MAHENDRA MAHADEV

Research Scholar

Narayanrao Chavan law College,

Nanded